24.02.2026
Piya
ct no. 5
sl. 2

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION

WPA 277 of 2026

Justin Bhutia
Vs.
State of West Bengal & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Khushi Kundu
Mr. Bijan Ghosh
......for the Petitioner

Mr. Joyjit Choudhury, ld. AAG
Ms. Rima Sarkar
......for the State

1. The writ application has been preferred challenging a show cause notice dated 19.09.2023 and the purported adjudication order passed by the respondent no. 2 dated 08.12.2023.

2. Vide the impugned order dated 08.12.2023 the respondent authority has disposed of the case directing the amount of total penalty to be paid by the petitioner herein.

3. The concerned authority has noted in the said order dated 08.12.2023 as follows:-

> *"……….Accordingly, a notice was issued in Form GST DRC-01 Ref. No. ZD190923030868U dated 19.09.2023 to the RTP directing him to show cause as to why he should not pay the tax as specified above along with interest u/s 50 as*

applicable on the tax specified above as well as penalty leviable under the provisions of the Act and as prescribed u/s 73(1).

Now from records it was found that the RTP had failed to reply to the show cause notice or he failed to appear before the undersigned. No record of payment of the liable amount could be found from records.

Therefore in spite of having been given reasonable time and opportunity, the RTP has failed to pay the due tax and/or interest or appear for hearing or submit any reconciliation in the matter.

Therefore on the basis of all available records, merits and evidences, it is evident that there remains short payment of tax and/or interest under the CGST/WBGST Act, 2017 read with section 20 of the IGST Act, 2017 as already summarized above………"

4. It is the case of the petitioner that the petitioner could not respond to show cause notice dated 19.09.2023, on the misunderstanding that even for a show cause a personal hearing was to be given and as the notice has been uploaded in the portal, the petitioner had no knowledge of the same.

5. It is submitted by the petitioner that not giving a personal hearing while issuing a show cause and noting "NA" is in direct contravention of the mandatory requirements of Section 75(4) of the GST Acts.

6. It is further submitted that the said show cause notice was uploaded under the "Additional Notices and Orders" tab of the GST portal, depriving the petitioner of a system-generated alert or timely knowledge of the proceedings.

7. Admittedly, the petitioner did not respond to the show cause and the said impugned order dated 08.12.2023 has been passed, imposing penalty.

8. **Section 75(4) of the GST Acts, is as follows:-**

> ***"Section 75(4)*** *An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."*

9. On perusal of the said relevant provision of the Act, it appears that an opportunity of hearing is to be granted when a request is received in writing from the person chargeable with tax or penalty in this case.

10. Admittedly the petitioner herein did not file any request before the authority concerned and his defence is that the said notice was not within his personal knowledge, as the same was uploaded in the portal but no physical notice was served upon him.

11. On hearing the parties and on perusal of the materials on record and the relevant provision of law, the show cause notice in the present case dated 19.09.2023 calling for a reply from the petitioner herein by a specific date **did not require a personal hearing** as it was only a notice asking the petitioner to file his response/request in response to the show cause notice dated 19.09.2023.

12. The petitioner submits that he has a right of hearing and was under the misconception that a personal hearing was to be conducted, and that he was required to be heard prior to issuance of show cause as per Section 75(4) of the Act.

13. But considering the relevant provision of the Act it is clear that the petitioner was first required to file a reply and in case the respondent authority was not satisfied with the reply of the petitioner herein, it was the duty of the authority concerned to issue a notice of personal hearing before passing the final order.

14. **In the present case,** the petitioner claims that he had no knowledge of the show cause notice and the petitioner thought that it was mandatory, that he was to be given a hearing, even prior to issuance of show cause notice.

15. **A show cause notice** is a method of asking the petitioner as to what is his case or defence against the prima facie case, subject to proof, made out against the petitioner.

16. The question of providing the petitioner with a hearing prior to issuance of show cause notice is a prayer not in accordance with law.

17. **A show cause notice** is a formal, written demand issued by a government authority, court, or employer requiring an individual or entity to explain, within a specific timeframe, why a proposed disciplinary action, penalty, or legal order should not be enforced. **It provides an opportunity for a "fair hearing" to justify actions before penalties imposed.**

18. Accordingly, in view of the above facts and in the interest of justice, the impugned order dated 08.12.2023 is hereby set aside, with a direction upon the petitioner herein to file their response/reply before the respondent authority with 15 days from the date of this order and the concerned authority shall consider the petitioner's case afresh, on the basis of the said reply and on giving a hearing to the petitioner as per Section 75(4) of the Act and other stake holders, consider and decide the case, in accordance with law, within 30 days thereafter.

19. **Writ application is accordingly disposed of.**

20. All connected application, if any, stands disposed of.

21. Interim order, if any, stands vacated.

22. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)